

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Mental Health and Developmental
5 Disabilities Code is amended by changing Sections 1-104.5 and
6 3-703 as follows:

7 (405 ILCS 5/1-104.5)

8 (This Section may contain text from a Public Act with a
9 delayed effective date)

10 Sec. 1-104.5. "Dangerous conduct" means threatening
11 behavior or conduct that places the person or another
12 individual in reasonable expectation of being harmed, or a
13 person's inability to provide, without the assistance of family
14 or outside help, for his or her basic physical needs so as to
15 guard himself or herself from serious harm.

16 Notwithstanding any other rulemaking authority that may
17 exist, neither the Governor nor any agency or agency head under
18 the jurisdiction of the Governor has any authority to make or
19 promulgate rules to implement or enforce the provisions of this
20 amendatory Act of the 95th General Assembly. If, however, the
21 Governor believes that rules are necessary to implement or
22 enforce the provisions of this amendatory Act of the 95th
23 General Assembly, the Governor may suggest rules to the General

1 Assembly by filing them with the Clerk of the House and
2 Secretary of the Senate and by requesting that the General
3 Assembly authorize such rulemaking by law, enact those
4 suggested rules into law, or take any other appropriate action
5 in the General Assembly's discretion. Nothing contained in this
6 amendatory Act of the 95th General Assembly shall be
7 interpreted to grant rulemaking authority under any other
8 Illinois statute where such authority is not otherwise
9 explicitly given. For the purposes of this amendatory Act of
10 the 95th General Assembly, "rules" is given the meaning
11 contained in Section 1-70 of the Illinois Administrative
12 Procedure Act, and "agency" and "agency head" are given the
13 meanings contained in Sections 1-20 and 1-25 of the Illinois
14 Administrative Procedure Act to the extent that such
15 definitions apply to agencies or agency heads under the
16 jurisdiction of the Governor.

17 (Source: P.A. 95-602, eff. 6-1-08.)

18 (405 ILCS 5/3-703) (from Ch. 91 1/2, par. 3-703)

19 Sec. 3-703. If no certificate was filed, the respondent
20 shall be examined separately by a physician, or clinical
21 psychologist, or qualified examiner and by a psychiatrist. If a
22 certificate executed by a psychiatrist was filed, the
23 respondent shall be examined by a physician, clinical
24 psychologist, qualified examiner, or psychiatrist. If a
25 certificate executed by a qualified examiner, clinical

1 psychologist, or a physician who is not a psychiatrist was
2 filed, the respondent shall be examined by a psychiatrist. The
3 examining physician, clinical psychologist, qualified examiner
4 or psychiatrist may interview by telephone or in person any
5 witnesses or other persons listed in the petition for
6 involuntary admission. If, as a result of an examination, a
7 certificate is executed, the certificate shall be promptly
8 filed with the court. If a certificate is executed, the
9 examining physician, clinical psychologist, qualified examiner
10 or psychiatrist may also submit for filing with the court a
11 report in which his findings are described in detail, and may
12 rely upon such findings for his opinion that the respondent is
13 subject to involuntary admission. Copies of the certificates
14 shall be made available to the attorneys for the parties upon
15 request prior to the hearing. A certificate prepared in
16 compliance with this Article shall state whether or not the
17 respondent is in need of immediate hospitalization. However, if
18 both of the certificates state that the respondent is not in
19 need of immediate hospitalization, the respondent may remain in
20 his or her place of residence absent imminent danger pending a
21 hearing on the petition unless he or she voluntarily agrees to
22 inpatient treatment.

23 Notwithstanding any other rulemaking authority that may
24 exist, neither the Governor nor any agency or agency head under
25 the jurisdiction of the Governor has any authority to make or
26 promulgate rules to implement or enforce the provisions of this

1 amendatory Act of the 95th General Assembly. If, however, the
2 Governor believes that rules are necessary to implement or
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12 Illinois statute where such authority is not otherwise
13 explicitly given. For the purposes of this amendatory Act of
14 the 95th General Assembly, "rules" is given the meaning
15 contained in Section 1-70 of the Illinois Administrative
16 Procedure Act, and "agency" and "agency head" are given the
17 meanings contained in Sections 1-20 and 1-25 of the Illinois
18 Administrative Procedure Act to the extent that such
19 definitions apply to agencies or agency heads under the
20 jurisdiction of the Governor.

21 (Source: P.A. 85-558.)

22 Section 10. The Mental Health and Developmental
23 Disabilities Confidentiality Act is amended by changing
24 Sections 4, 9.2, and 11 as follows:

1 (740 ILCS 110/4) (from Ch. 91 1/2, par. 804)

2 Sec. 4. (a) The following persons shall be entitled, upon
3 request, to inspect and copy a recipient's record or any part
4 thereof:

5 (1) the parent or guardian of a recipient who is under
6 12 years of age;

7 (2) the recipient if he is 12 years of age or older;

8 (3) the parent or guardian of a recipient who is at
9 least 12 but under 18 years, if the recipient is informed
10 and does not object or if the therapist does not find that
11 there are compelling reasons for denying the access. The
12 parent or guardian who is denied access by either the
13 recipient or the therapist may petition a court for access
14 to the record. Nothing in this paragraph is intended to
15 prohibit the parent or guardian of a recipient who is at
16 least 12 but under 18 years from requesting and receiving
17 the following information: current physical and mental
18 condition, diagnosis, treatment needs, services provided,
19 and services needed, including medication, if any;

20 (4) the guardian of a recipient who is 18 years or
21 older;

22 (5) an attorney or guardian ad litem who represents a
23 minor 12 years of age or older in any judicial or
24 administrative proceeding, provided that the court or
25 administrative hearing officer has entered an order
26 granting the attorney this right; ~~or~~

1 (6) an agent appointed under a recipient's power of
2 attorney for health care or for property, when the power of
3 attorney authorizes the access; ~~or-~~

4 (7) an attorney-in-fact appointed under the Mental
5 Health Treatment Preference Declaration Act.

6 (b) Assistance in interpreting the record may be provided
7 without charge and shall be provided if the person inspecting
8 the record is under 18 years of age. However, access may in no
9 way be denied or limited if the person inspecting the record
10 refuses the assistance. A reasonable fee may be charged for
11 duplication of a record. However, when requested to do so in
12 writing by any indigent recipient, the custodian of the records
13 shall provide at no charge to the recipient, or to the
14 Guardianship and Advocacy Commission, the agency designated by
15 the Governor under Section 1 of the Protection and Advocacy for
16 Developmentally Disabled Persons Act or to any other
17 not-for-profit agency whose primary purpose is to provide free
18 legal services or advocacy for the indigent and who has
19 received written authorization from the recipient under
20 Section 5 of this Act to receive his records, one copy of any
21 records in its possession whose disclosure is authorized under
22 this Act.

23 (c) Any person entitled to access to a record under this
24 Section may submit a written statement concerning any disputed
25 or new information, which statement shall be entered into the
26 record. Whenever any disputed part of a record is disclosed,

1 any submitted statement relating thereto shall accompany the
2 disclosed part. Additionally, any person entitled to access may
3 request modification of any part of the record which he
4 believes is incorrect or misleading. If the request is refused,
5 the person may seek a court order to compel modification.

6 (d) Whenever access or modification is requested, the
7 request and any action taken thereon shall be noted in the
8 recipient's record.

9 (e) Notwithstanding any other rulemaking authority that
10 may exist, neither the Governor nor any agency or agency head
11 under the jurisdiction of the Governor has any authority to
12 make or promulgate rules to implement or enforce the provisions
13 of this amendatory Act of the 95th General Assembly. If,
14 however, the Governor believes that rules are necessary to
15 implement or enforce the provisions of this amendatory Act of
16 the 95th General Assembly, the Governor may suggest rules to
17 the General Assembly by filing them with the Clerk of the House
18 and Secretary of the Senate and by requesting that the General
19 Assembly authorize such rulemaking by law, enact those
20 suggested rules into law, or take any other appropriate action
21 in the General Assembly's discretion. Nothing contained in this
22 amendatory Act of the 95th General Assembly shall be
23 interpreted to grant rulemaking authority under any other
24 Illinois statute where such authority is not otherwise
25 explicitly given. For the purposes of this amendatory Act of
26 the 95th General Assembly, "rules" is given the meaning

1 contained in Section 1-70 of the Illinois Administrative
2 Procedure Act, and "agency" and "agency head" are given the
3 meanings contained in Sections 1-20 and 1-25 of the Illinois
4 Administrative Procedure Act to the extent that such
5 definitions apply to agencies or agency heads under the
6 jurisdiction of the Governor.

7 (Source: P.A. 88-484; 89-439, eff. 6-1-96.)

8 (740 ILCS 110/9.2)

9 Sec. 9.2. Interagency disclosure of recipient information.
10 For the purposes of continuity of care, the Department of Human
11 Services (as successor to the Department of Mental Health and
12 Developmental Disabilities), community agencies funded by the
13 Department of Human Services in that capacity, licensed private
14 hospitals receiving payments from the Department of Human
15 Services or the Department of Healthcare and Family Services,
16 State correctional facilities ~~prisons operated by the~~
17 ~~Department of Corrections,~~ mental health facilities operated
18 by a county, and jails operated by any county of this State may
19 disclose a recipient's record or communications, without
20 consent, to each other, but only for the purpose of admission,
21 treatment, planning, or discharge. Entities shall not
22 redisclose any personally identifiable information, unless
23 necessary for admission, treatment, planning, or discharge of
24 the identified recipient to another setting. No records or
25 communications may be disclosed to a county jail or State

1 correctional facility ~~prison~~ pursuant to this Section unless
2 the Department has entered into a written agreement with the
3 county jail or State correctional facility ~~prison~~ requiring
4 that the county jail or State correctional facility ~~prison~~
5 adopt written policies and procedures designed to ensure that
6 the records and communications are disclosed only to those
7 persons employed by or under contract to the county jail or
8 State correctional facility ~~prison~~ who are involved in the
9 provision of mental health services to inmates and that the
10 records and communications are protected from further
11 disclosure. For the purposes of this Section, the term
12 "licensed private hospital" shall have the meaning ascribed to
13 it in the Mental Health and Developmental Disabilities Code.

14 Notwithstanding any other rulemaking authority that may
15 exist, neither the Governor nor any agency or agency head under
16 the jurisdiction of the Governor has any authority to make or
17 promulgate rules to implement or enforce the provisions of this
18 amendatory Act of the 95th General Assembly. If, however, the
19 Governor believes that rules are necessary to implement or
20 enforce the provisions of this amendatory Act of the 95th
21 General Assembly, the Governor may suggest rules to the General
22 Assembly by filing them with the Clerk of the House and
23 Secretary of the Senate and by requesting that the General
24 Assembly authorize such rulemaking by law, enact those
25 suggested rules into law, or take any other appropriate action
26 in the General Assembly's discretion. Nothing contained in this

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4 explicitly given. For the purposes of this amendatory Act of
5 the 95th General Assembly, "rules" is given the meaning
6 contained in Section 1-70 of the Illinois Administrative
7 Procedure Act, and "agency" and "agency head" are given the
8 meanings contained in Sections 1-20 and 1-25 of the Illinois
9 Administrative Procedure Act to the extent that such
10 definitions apply to agencies or agency heads under the
11 jurisdiction of the Governor.

12 (Source: P.A. 94-182, eff. 7-12-05.)

13 (740 ILCS 110/11) (from Ch. 91 1/2, par. 811)

14 Sec. 11. Disclosure of records and communications. Records
15 and communications may be disclosed:

16 (i) in accordance with the provisions of the Abused and
17 Neglected Child Reporting Act, subsection (u) of Section 5
18 of the Children and Family Services Act, or Section 7.4 of
19 the Child Care Act of 1969;

20 (ii) when, and to the extent, a therapist, in his or
21 her sole discretion, determines that disclosure is
22 necessary to initiate or continue civil commitment
23 proceedings under the laws of this State or to otherwise
24 protect the recipient or other person against a clear,
25 imminent risk of serious physical or mental injury or

1 disease or death being inflicted upon the recipient or by
2 the recipient on himself or another;

3 (iii) when, and to the extent disclosure is, in the
4 sole discretion of the therapist, necessary to the
5 provision of emergency medical care to a recipient who is
6 unable to assert or waive his or her rights hereunder;

7 (iii-a) to any medical practitioner from whom the
8 recipient is seeking medical care, including any primary
9 care physician; however, disclosure shall be limited to
10 pharmaceutical records and communications regarding
11 pharmaceuticals, including records and communications
12 regarding payment for pharmaceuticals;

13 (iv) when disclosure is necessary to collect sums or
14 receive third party payment representing charges for
15 mental health or developmental disabilities services
16 provided by a therapist or agency to a recipient under
17 Chapter V of the Mental Health and Developmental
18 Disabilities Code or to transfer debts under the
19 Uncollected State Claims Act; however, disclosure shall be
20 limited to information needed to pursue collection, and the
21 information so disclosed shall not be used for any other
22 purposes nor shall it be redisclosed except in connection
23 with collection activities;

24 (v) when requested by a family member, the Department
25 of Human Services may assist in the location of the
26 interment site of a deceased recipient who is interred in a

1 cemetery established under Section 100-26 of the Mental
2 Health and Developmental Disabilities Administrative Act;

3 (vi) in judicial proceedings under Article VIII of
4 Chapter III and Article V of Chapter IV of the Mental
5 Health and Developmental Disabilities Code and proceedings
6 and investigations preliminary thereto, to the State's
7 Attorney for the county or residence of a person who is the
8 subject of such proceedings, or in which the person is
9 found, or in which the facility is located, to the attorney
10 representing the recipient in the judicial proceedings, to
11 any person or agency providing mental health services that
12 are the subject of the proceedings and to that person's or
13 agency's attorney, to any court personnel, including but
14 not limited to judges and circuit court clerks, and to a
15 guardian ad litem if one has been appointed by the court,
16 provided that the information so disclosed shall not be
17 utilized for any other purpose nor be redisclosed except in
18 connection with the proceedings or investigations;

19 (vii) when, and to the extent disclosure is necessary
20 to comply with the requirements of the Census Bureau in
21 taking the federal Decennial Census;

22 (viii) when, and to the extent, in the therapist's sole
23 discretion, disclosure is necessary to warn or protect a
24 specific individual against whom a recipient has made a
25 specific threat of violence where there exists a
26 therapist-recipient relationship or a special

1 recipient-individual relationship;
2 (ix) in accordance with the Sex Offender Registration
3 Act;
4 (x) in accordance with the Rights of Crime Victims and
5 Witnesses Act;
6 (xi) in accordance with Section 6 of the Abused and
7 Neglected Long Term Care Facility Residents Reporting Act;
8 and
9 (xii) in accordance with Section 55 of the Abuse of
10 Adults with Disabilities Intervention Act.

11 Any person, institution, or agency, under this Act,
12 participating in good faith in the making of a report under the
13 Abused and Neglected Child Reporting Act or in the disclosure
14 of records and communications under this Section, shall have
15 immunity from any liability, civil, criminal or otherwise, that
16 might result by reason of such action. For the purpose of any
17 proceeding, civil or criminal, arising out of a report or
18 disclosure under this Section, the good faith of any person,
19 institution, or agency so reporting or disclosing shall be
20 presumed.

21 Notwithstanding any other rulemaking authority that may
22 exist, neither the Governor nor any agency or agency head under
23 the jurisdiction of the Governor has any authority to make or
24 promulgate rules to implement or enforce the provisions of this
25 amendatory Act of the 95th General Assembly. If, however, the
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16 Administrative Procedure Act to the extent that such
17 definitions apply to agencies or agency heads under the
18 jurisdiction of the Governor.

19 (Source: P.A. 94-852, eff. 6-13-06; 94-1010, eff. 10-1-06;
20 95-331, eff. 8-21-07.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.